

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )

)  
Supplemental Showing in Connection )  
with Pending Nevada Bell, Pacific Bell, )  
and Southwestern Bell Petitions for )  
Forbearance from Application of )  
Section 272 of the Act to Previously )  
Authorized Services )

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CC Docket No. 96-149

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION  
ON SUPPLEMENTAL FILING BY SOUTHWESTERN BELL TELEPHONE  
COMPANY, PACIFIC BELL AND NEVADA BELL IN CONNECTION  
WITH THEIR PETITIONS FOR FORBEARANCE

Pursuant to the Public Notice released in this docket on July 11, 1997,<sup>1</sup> MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby submits these comments on the supplemental showing filed by Southwestern Bell Telephone Company (SWBT), Pacific Bell and Nevada Bell (Pac Bell) in support of their respective petitions for forbearance previously filed in this docket. As explained in MCI's previous filings, application of the Section 272 nondiscrimination safeguards, or the equivalent thereof, to Bell Operating Company (BOC) interLATA E911 services is necessary for the protection of competition and the public interest.

As was the case with the supplemental showings by the other BOCs in connection with their previous petitions for forbearance

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Pleading Cycle Established for Comments on Supplemental Showings in Connection with Pending Nevada Bell, Pacific Bell, and Southwestern Bell Petitions for Forbearance from Application of Section 272 of the Act to Previously Authorized Services, CC Docket No. 96-149, DA 97-1459 (released July 11, 1997).

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as to their reverse directory assistance and E911 services,<sup>2</sup> nothing in the SWBT/Pac Bell filing in any way alters or undermines MCI's arguments as to its need for nondiscriminatory access to the emergency numbers in the BOCs' E911 databases as well as the ability to upload its customer records into the BOCs' E911 databases for purposes of delivering 911 calls. The SWBT/Pac Bell filing focuses on the separation requirements of Section 272, but does not explain why forbearance from the nondiscrimination requirements is necessary or appropriate for their interLATA E911 services. Their requests for forbearance should therefore be denied as to the nondiscrimination requirements of Section 272.

### Introduction

In their supplemental filing, SWBT and Pac Bell elaborate on their previous requests for forbearance from the application of the requirements of Section 272 to their E911 services. Although more detail about the services is provided, there does not appear to be anything in their supplemental submission that in any way affects MCI's analysis in its previous initial comments on their petitions, which comments are appended hereto as Attachment A.<sup>3</sup>

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<sup>2</sup> Pleading Cycle Established for Comments on Supplemental Showings in Connection with Pending Ameritech, Bell Atlantic, BellSouth, Nynex, and U S West Petitions for Forbearance from Application of Section 272 of the Act to Previously Authorized Services, CC Docket No. 96-149, DA 97-1403 (released July 3, 1997).

<sup>3</sup> Comments of MCI Telecommunications Corporation on Petitions for Forbearance (April 21, 1997).

As MCI previously explained in Attachment A, and reiterated in its Comments filed last week on the other BOCs' supplemental showings,<sup>4</sup> the crucial safeguards in Section 272 relevant to these requests are the nondiscrimination requirements in Section 272(c)(1) and (e). Although the supplemental filing dwells on the need to forbear from the application of the separation requirements of Section 272(b) to E911 services and the public interest in the efficiencies of unseparated provision of such services, it says very little about the nondiscrimination requirements.

As MCI previously explained, both in Attachment A and in last week's Comments, it is extremely doubtful that forbearance from the nondiscrimination provisions of Section 272, or, for that matter, any nondiscrimination requirements, would ever be appropriate for a dominant carrier in any conceivable circumstances, since the marketplace cannot be relied upon to prevent unjust or unreasonable discrimination by a dominant carrier, and, particularly, a carrier controlling the local exchange network. Because of this inherent contradiction in granting forbearance from the application of any nondiscrimination requirements to a BOC, these petitions start with a heavy burden to overcome, at least as to the requirements of Section 272(c)(1) and (e). SWBT and Pac Bell have done

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<sup>4</sup> Comments of MCI Telecommunications Corporation on Supplemental Filings by Ameritech, Bell Atlantic, BellSouth, Nynex and U S West Petitions for Forbearance, CC Docket No. 96-149 (July 22, 1997).

nothing in their supplemental filing to meet that burden.

In Attachment A, MCI also explained its need for nondiscriminatory access to the emergency numbers in the BOCs' E911 databases in order to fulfill its own legally mandated emergency operator service obligations as well as its need to be able to upload its customer records into E911 databases for purposes of delivering E911 calls. MCI explained in Attachment A that its need for access to emergency numbers requires denial of the petitions as to the nondiscrimination requirements of Section 272, since MCI will not be able to meet its emergency service obligations if it does not have access to the emergency numbers in the BOCs' E911 databases.

The Supplemental Filing Does Not Address  
MCI's Discrimination Concerns

The SWBT/Pac Bell supplemental filing does not, for the most part, address MCI's needs for nondiscriminatory access to emergency numbers. SWBT and Pac Bell do complain about MCI's request but never explain why it could not easily be met. They assert that MCI has not explained why it needs such access, which is clearly not the case. As MCI explained in Attachment A, it is under a legal obligation to provide emergency operator services on an interLATA basis and thus requires nondiscriminatory access to the emergency numbers contained in the BOCs' (as well as other incumbent local exchange carriers') E911 databases and used in the provision of E911 services as well as the ability to upload MCI's customer records into E911 databases for purposes of

delivering 911 calls. All of the public safety concerns cited by SWBT, Pac Bell and other BOCs with regard to their E911 services thus apply equally to MCI's provision of interLATA emergency operator services, requiring that MCI have access to emergency response agency telephone numbers to support those legally mandated MCI services. If there is any aspect of that explanation that SWBT and Pac Bell do not understand, MCI would be happy to provide additional details upon request.

SWBT and Pac Bell also argue that nondiscriminatory access to E911 is a checklist item for Section 271 authorization for entry into in-region interLATA services, providing all the protection MCI needs. SWBT and Pac Bell also invite MCI to file a complaint or seek legislative changes if it "is unhappy with" the protection provided by the checklist.<sup>5</sup> The Section 271 checklist does not meet MCI's concerns, however. MCI needs access to the emergency numbers in the BOCs' E911 databases so that it can provide emergency operator services. Access to E911 service itself is not the issue. Also, MCI should not have to wait for BOC entry into long distance services in order to obtain nondiscriminatory access to the emergency numbers that the BOCs are using now in their provision of E911 services. MCI also should not have to file a complaint to secure the same relief to which it now has an absolute right under Sections 271 and 272 of the Communications Act. It is SWBT and Pac Bell that are asking

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<sup>5</sup> Letter from Robert J. Gryzmala, Southwestern Bell, to William F. Caton, FCC, dated July 10, 1997, at 9.

to be relieved of current legal obligations, not MCI.

SWBT and Pac Bell also argue that the nondiscrimination provisions of Section 272(c)(1) and (e) apply only to separate affiliates and that if their requests are granted as to the separation requirements of Section 272(b), there will be no separate affiliates to which the nondiscrimination requirements could apply. That argument proves too much, however, since it would require separation of the E911 services from the BOCs' local exchange services simply in order to apply the nondiscrimination requirements of Section 272. In MCI's view, such an all-or-nothing approach would be pointless and would lead to poor regulatory choices not required by law. Application of the separation requirements to the BOCs' E911 services is not necessary except in aid of the nondiscrimination requirements. SWBT and Pac Bell, as well as the other BOCs, have made it clear, however, that they intend to deny MCI the nondiscriminatory access it needs if they are allowed to do so, thus leading precisely to the discrimination that requires the denial of forbearance under Section 10 of the Act. No other conclusion can be drawn from their cavalier invitation to MCI to file a complaint if it "is unhappy with" their refusal to acknowledge its right to such access.

If the Commission wants to avoid imposing the separation requirements, it is therefore crucial that nondiscrimination requirements at least equivalent to those in Sections 272(c)(1) and (e) be imposed on the BOCs' provision of E911 services as a

condition for such forbearance. Accordingly, these petitions should be granted only on condition that SWBT and Pac Bell make available to MCI and all other carriers obligated to provide emergency operator services access to emergency response agency telephone numbers to support such legally mandated services.

SWBT and Pac Bell previously raised another argument against MCI's nondiscrimination request, namely, that MCI, or any other carrier providing emergency operator services, could not necessarily use the emergency agency response numbers any particular BOC uses because the area served from any given MCI switch would not necessarily be coterminous with the BOC's wire center boundaries.<sup>6</sup> This is a red herring, however, since the areas served by the BOC and MCI switches are irrelevant to the loading of the appropriate emergency response numbers for any given subscriber into their respective switches. The same emergency agency numbers will be appropriate for each subscriber, irrespective of which MCI switch or BOC wire center serves that subscriber or the geographic area served by such switches.

#### Conclusion

Accordingly, the SWBT/Pac Bell supplemental filing does not alter the posture of their previous forbearance requests. They have not borne their burden of showing why the nondiscrimination requirements of Section 272, or equivalent nondiscrimination

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<sup>6</sup> Reply Comments of SBC Communications, Inc. at 4-5, CC Docket No. 96-149 (May 6, 1997).

rules, should not be applied to their interLATA E911 services. Their forbearance requests therefore should be denied unless they are required to provide nondiscriminatory access to the emergency numbers contained in their E911 databases and used in the provision of E911 services and to allow MCI to upload its customer records into E911 databases for purposes of delivering 911 calls.

Respectfully submitted,

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Dated: July 28, 1997



## APPENDIX A

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions for Forbearance	)	
from Application of Section 272 of the	)	CC Docket No. 96-149
Communications Act of 1934, as Amended,	)	
to Previously Authorized Services	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION  
ON PETITIONS FOR FORBEARANCE

Pursuant to the corrected Public Notice released in this docket on March 25, 1997,<sup>1</sup> MCI Telecommunications Corporation (MCI), by its undersigned attorneys, submits these comments on the petitions filed in this docket by Bell Atlantic, US West Communications, Inc., Southwestern Bell Telephone Company and Pacific Telesis Group for forbearance from the application of Section 272 of the Communications Act to their E911 services.<sup>2</sup> As explained below, application of nondiscrimination safeguards equivalent to the nondiscrimination requirements of Section 272(c)(1) and (e) to the Bell Operating Companies' (BOCs') E911 services is necessary for the protection of competition and the

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<sup>1</sup> Correction, Pleading Cycle Established for Comments on Petitions for Forbearance from Application of Section 272 of the Communications Act to Previously Authorized Services, CC Docket No. 96-149, DA 97-599 (released March 25, 1997).

<sup>2</sup> Bell Atlantic Petition for Forbearance (filed March 7, 1997)(Bell Atlantic Pet.); US West Communications, Inc. Petition for Forbearance (filed March 14, 1997)(US West Pet.); Reply of Southwestern Bell Telephone Company to BellSouth's Petition for Forbearance, and, in the Alternative, Petition for Forbearance of Southwestern Bell Telephone Company (filed March 17, 1997)(SWB Pet.); Pacific Telesis Group Petition for Forbearance (filed March 19, 1997)(PacTel Pet.).

public interest.

### Introduction

As the BOCs acknowledge in their petitions for forbearance under Section 10 of the Communications Act, 47 U.S.C. § 160, previously authorized interLATA information services, such as their E911 services, are subject to the separation and nondiscrimination requirements of Section 272. Section 10 requires the Commission to forbear from applying any provision of the Act if it determines that: enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with a carrier or service are just and reasonable and not unreasonably discriminatory; enforcement of such provision is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. § 160(a).

The petitioners assert that provision of their E911 services on an unseparated basis has already been found to be in the public interest and otherwise meets the criteria of Section 10. They argue that application of the Section 272 separation requirements to these services will be disruptive and will increase the cost of providing them, to the detriment of consumers.

A. The Petitions Must be Denied as to the Nondiscrimination Requirements of Section 272

As a preliminary matter, it is extremely doubtful that

forbearance from the nondiscrimination provisions of Section 272, or, for that matter, any nondiscrimination requirements, would ever be appropriate for a dominant carrier in any conceivable circumstances. As pointed out above, one of the requirements for the granting of a request for forbearance from the application of a provision of the Communications Act is that "enforcement of such ... provision is not necessary to ensure that ... practices ... by [a] ... carrier ... are not unjustly or unreasonably discriminatory." 47 U.S.C. § 160(a)(1). Since the marketplace cannot be relied upon to prevent unjust or unreasonable discrimination by a dominant carrier, and, particularly, a carrier controlling the local exchange network, it is inconceivable that there would ever be a situation in which enforcement of a nondiscrimination requirement would not be "necessary to ensure that" a BOC's practices "are not unjustly or unreasonably discriminatory." Because of this inherent contradiction in granting forbearance from the application of any nondiscrimination requirements to a BOC, no BOC petition for forbearance from the nondiscrimination requirements of Section 272(c)(1) and (e) could legally be granted.

It is difficult to tell whether the four petitions at issue here seek forbearance from the application of both the nondiscrimination and separation requirements of Section 272 or only the latter. They only address the separation requirements, but, except for US West,<sup>3</sup> generally request forbearance from the

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<sup>3</sup> US West Pet. at 1.

application of "the requirements of Section 272,"<sup>4</sup> suggesting both the separation and nondiscrimination requirements. To the extent that they seek forbearance as to the requirements of Section 272(c)(1) and (e), they must be denied.

US West has pointed out previously, however, that the nondiscrimination requirements of Section 272 are framed in terms of equality between the separated affiliate and other entities and thus cannot be literally applied to the unseparated provision of interLATA services.<sup>5</sup> Thus, it may be necessary to require separation of the E911 services from the BOCs' local exchange services simply in order to apply the nondiscrimination requirements of Section 272. The BOCs would no doubt argue that separation would be too disruptive and that it is therefore necessary to maintain unseparated E911 services even if that means that the nondiscrimination requirements of Section 272 cannot be applied.

It is crucial, however, that nondiscrimination requirements equivalent to those in Sections 272(c)(1) and (e) be imposed on the BOCs' provision of E911 services. As the Commission is aware, MCI is under a legal obligation to provide emergency operator services on an interLATA basis and thus requires nondiscriminatory access to the emergency numbers contained in

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<sup>4</sup> PacTel Pet. at 1.

<sup>5</sup> Reply Comments of US West, Inc. at 3, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149 (filed March 17, 1997).

the BOCs' (as well as other incumbent local exchange carriers') E911 databases and used in the provision of E911 services as well as the ability to upload MCI's customer records into E911 databases for purposes of delivering 911 calls. All of the public safety concerns cited by the BOCs apply equally to MCI's provision of interLATA emergency operator services, requiring that MCI have access to emergency response agency telephone numbers to support those legally mandated MCI services.

Such nondiscriminatory access to emergency numbers is also required by Section 251 of the Act. The First Interconnection Order<sup>6</sup> held that E911 is one of the capabilities included within the local switching element that an incumbent LEC must make available on an unbundled basis upon request to a telecommunications carrier under Section 251(c)(3).<sup>7</sup> Moreover, incumbent LECs are required "to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves...."<sup>8</sup> Thus, an incumbent LEC must make available to competing providers nondiscriminatory access to the emergency numbers in its E911 databases that is at least equivalent to the ILEC's own access. Finally, as Bell Atlantic and US West point out, provision to competitive providers of

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<sup>6</sup> First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-235 (released Aug. 8, 1996).

<sup>7</sup> Id. at ¶¶ 410-12.

<sup>8</sup> Id. at ¶ 313.

nondiscriminatory access to E911 service is a condition of long distance entry under Section 271(c)(2)(B)(vii)(I).<sup>9</sup>

Accordingly, it is necessary to apply nondiscrimination requirements equivalent to those in Section 272(c)(1) and (e) to the emergency numbers used in the BOCs' provision of E911 services. The petitioners must therefore be required to treat all other entities as they treat themselves for such purposes, at the same terms and conditions and on an equally timely basis, and at the same imputed charges.

B. Other Legal Requirements Cannot Substitute for Nondiscrimination Requirements Equivalent to Section 272(c)(1) and (e)

Bell Atlantic and US West suggest that since nondiscriminatory access to E911 service is a condition of long distance entry, application of the nondiscrimination requirements of Section 272 is not necessary and may be forborne.<sup>10</sup> Ideally, that might be true, but the Section 271 checklist has no "bite" unless and until a BOC applies for in-region authority.

Moreover, at least some of the BOCs do not seem to be constrained by other nondiscrimination requirements. In its Reply in support of its Petition for Forbearance from the application of Section 272 to its reverse directory assistance service, BellSouth argued that application of Section 272 is not required because of all of the other legal requirements

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<sup>9</sup> Bell Atlantic Pet. at 5 n.11; US West Pet. at 4 & n.6.

<sup>10</sup> Id.

guaranteeing nondiscrimination, including Sections 202(a) and 251. BellSouth then rebutted its own argument by stating that it still was not going to make its entire directory assistance database available to MCI and that if MCI or any other competitive provider had a problem with that, they should file a formal complaint.<sup>11</sup> This Commodore Vanderbilt-era attitude is troublesome and heightens MCI's anxiety that only the most strict, explicit order in this proceeding can guarantee nondiscriminatory access to the emergency numbers in the BOCs' E911 databases.

#### Conclusion

Accordingly, these petitions should not be granted as to the nondiscrimination requirements of Section 272(c)(1) and (e), since they, or equivalent requirements applicable to unseparated E911 services, are necessary to provide the nondiscriminatory access to emergency numbers in the E911 databases that is so

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<sup>11</sup> BellSouth Reply at 7-10, BellSouth Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services, CC Docket No. 96-149 (filed March 17, 1997).



necessary to the development of full local competition.

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**CERTIFICATE OF SERVICE**

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing "COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION ON SUPPLEMENTAL RESPONSE" was served this 28nd day of July, 1997, by hand-delivery or first-class mail, postage prepaid, upon each of the following persons:

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